

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

BANK OF AMERICA CORPORATION, :

Defendant. :  
-----x

USDC SDNY  
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09 Civ. 6829 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

On August 3, 2009, the Securities and Exchange Commission filed a Complaint in the above-captioned matter in which "[t]he Commission charges Bank of America with making materially false and misleading statements in the joint proxy statement that it filed with Merrill Lynch & Co., Inc. ("Merrill") in connection with Bank of America's \$50 billion acquisition of Merrill on January 1, 2009." Compl. ¶ 1. Among other things, the Complaint alleges that Bank of America falsely represented to shareholders of both Merrill and Bank of America that Merrill had agreed not to pay year-end bonuses to Merrill executives when, in fact, Bank of America had agreed that Merrill could pay such bonuses up to as much as \$5.8 billion. As a result, according to the Complaint, Merrill paid \$3.6 billion in bonuses in the face of a record loss of \$27.8 billion in 2008.

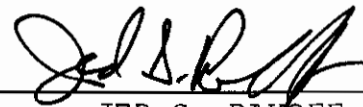
In tandem with the Complaint, the parties filed a proposed Consent Judgment by which, among other things, Bank of America, without admitting or denying the allegations, agreed to pay a civil penalty in the amount of \$33 million. Despite the public importance of this case, the proposed Consent Judgment would leave uncertain the

truth of the very serious allegations made in the Complaint.

Further, the proposed Consent Judgment in no way specifies the basis for the \$33 million figure or whether any of this money is derived directly or indirectly from the \$20 billion in public funds previously advanced to Bank of America as part of its "bail out."

Accordingly, the Court will convene a hearing on Monday, August 10, 2009 at 4 PM in Courtroom 14-B at 500 Pearl Street, New York, New York to hear from the parties with respect to their proposed Consent Judgment.

SO ORDERED.



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JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
August 5, 2009